

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, January 7, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Eugene Carroll, Gerry Krieser, Roger Larson, Dan Marvin, Melinda Pearson, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor; Marvin Krout, Ray Hill, Mike DeKalb, Ed Zimmer, Brian Will, Tom Cajka, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held December 10, 2003. Motion for approval made by Carlson, seconded by Krieser and carried 6-0: Carlson, Krieser, Larson, Marvin, Bills-Strand and Taylor voting 'yes'; Carroll, Pearson and Sunderman abstaining.

Election of Vice-Chair: Jon Carlson was elected on a ballot vote of 6-3.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3432; SPECIAL PERMIT NO. 2047; COUNTY SPECIAL PERMIT NO. 207 and COUNTY PRELIMINARY PLAT NO. 03010, OAK PRAIRIE; PRELIMINARY PLAT NO. 03008, NORTH CREEK 1ST ADDITION; STREET AND ALLEY VACATION NO. 03014; STREET AND ALLEY VACATION NO. 03018; and WAIVER NO. 03015.**

Item No. 1.3a, County Special Permit No. 207, and Item No. 1.3b, County Preliminary Plat No. 03010, were removed from the Consent Agenda at the request of Commissioner Pearson and scheduled for separate public hearing. **Item No. 1.5, Street and Alley**

Vacation No. 03015, was removed from the Consent Agenda and scheduled for separate public hearing at the request of Michael Rierden.

Carlson moved to approve the remaining Consent Agenda, seconded by Larson and carried 9-0: Carlson, Carroll, Krieser, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'.

Note: This is final action on the North Creek 1st Addition Preliminary Plat No. 03008 and Waiver No. 03015, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

COUNTY SPECIAL PERMIT NO. 207,
OAK PRAIRIE COMMUNITY UNIT PLAN,
and
COUNTY PRELIMINARY PLAT NO. 03010,
OAK PRAIRIE,
ON PROPERTY GENERALLY LOCATED
AT N.W. 140TH STREET AND W. HOLDREGE STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

These applications were removed from the Consent Agenda and had separate public hearing at the request of Commissioner Pearson.

Proponents

1. Brian Carstens appeared on behalf of **Lee and Judy Vieselmeyer** to answer any questions.

There was no testimony in opposition.

Pearson referred to the density calculations in the staff report, and then the comments about performance standards. She understands that the clustering allows nine lots with the 20% bonus, but why not seven or eight lots? Mike DeKalb of Planning staff explained that Analysis #4 is the density calculation under today's standards, so based on 154 acres, they are allowed 7.7 dwelling units, or 9 units with the 20% bonus. In Analysis #5, the staff also related

calculations based on performance standards as proposed just to provide a benchmark. The calculations on the performance standards were set forth only as a reference. This proposal meets today's standards.

Relative to clustering, the idea of clustering is to shift from the large 20-acre lots down to a pod of smaller lots. This proposal clusters 5 lots around the one cul-de-sac. The other advantage is that it does not have to be one cluster. There is flexibility to move things around to reflect the layout of the land and the access points.

Pearson noted that Analysis #1 states that the 20% bonus is being requested for preservation of farm land. Is that something that is typically given? DeKalb responded in the affirmative, stating that the code allows a 20% bonus for preservation of environmental issues, farm land, solar access, handicap access, etc. In this case, Outlot A is reserved for farming and it is in fact a tree farm. Outlot A cannot be built upon so they have requested the 20% bonus, which is typically granted. The 20% bonus cannot be granted administratively.

Marvin noted that Holdrege Street is a gravel road requiring a 350 vehicle count to trigger a change to blacktop. What do you think that these 9 acreages do in terms of increasing traffic? DeKalb noted that the County Engineer did not call this proposed development as a trigger, and Holdrege Street is not in the long range plan for future improvement. The traffic impact should be essentially equivalent to what could be done by splitting them off as 20-acre parcels. DeKalb does not believe this development will trigger the improvement.

Taylor believes it makes sense that they would request waiver of the street trees and sidewalks. Will this area never be considered for annexation? DeKalb explained that the current provisions of the code do mention potential annexation as a point of consideration; however, this area is outside all of the growth tiers of the city.

COUNTY SPECIAL PERMIT NO. 207

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Taylor moved to approve the staff recommendation of conditional approval, seconded by Carlson and carried 9-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the Lancaster County Board of Commissioners.

COUNTY PRELIMINARY PLAT NO. 03010

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Taylor moved to approve the staff recommendation of conditional approval, seconded by Krieser and carried 9-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the Lancaster County Board of Commissioners.

ALLEY VACATION NO. 03014
TO VACATE THAT PORTION OF THE
EAST-WEST ALLEY BETWEEN “O” AND “N” STREETS
AND S. 26TH AND S. 27TH STREETS, WHICH HAS NOT
ALREADY BEEN VACATED.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand.

Staff recommendation: A finding of conformance with the Comprehensive Plan, with conditions.

Ex Parte Communications: None.

This application was removed from the Consent Agenda and had separate public hearing at the request of Michael Rierden.

Proponents

1. Michael Rierden appeared on behalf of the property owners, **Mr. and Mrs. Long, Mr. and Mrs. Cintani and B&J Partnership**. This request relates to the southwest corner of the intersection at 27th & “O”. The first business on the corner is the hot tub business owned by the Longs, and then it goes further to the west. Mr. Rierden was involved in the vacation of the west portion of this alley several years ago, so they are now finishing the job as far as having the alley entirely vacated.

Under the conditions of approval, there is a requirement that the alley at 27th Street go away and that the curb and gutter and sidewalk be replaced, thus there would be no ingress or egress at that location. The primary concern of Public Works is that, when exiting, you have to practically be in 27th Street before you can see the north/south traffic. Rierden and Public Works have reached a compromise that requires the owners to post the alley as an “entry only” driveway. This is satisfactory to Public Works and to the property owners. This will allow a point of egress for the parking lot.

Larson inquired whether all of the property owners along “O” Street that are affected by this alley vacation are involved. Rierden indicated that they all agree.

Carroll inquired as to how long they will extend the driveway in from 27th to the west. Rierden stated that it would remain “as is” but needs reconstruction. It will extend all the way to the property owned by B&J, which is the old Jacob North property which is past the existing parking lot.

There was no testimony in opposition.

Dennis Bartels of Public Works stated that principally, Public Works would agree, but they would like to see an application for a permit to locate that driveway there just for record keeping purposes, i.e. to convert the alley return to a driveway permit. This could be done by amending Condition #1.3 to require the applicant to apply for a driveway permit for an "entry only" driveway.

Carroll inquired about the portion of the alley now extending past the parking lot. Bartels explained that the existing alley is a dead-end alley and it will become private property when vacated. Public Works would take care of the details of design when they make the application.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Carlson moved a finding of conformance with the Comprehensive Plan, with amendment to Condition #1.3 as suggested by Public Works, seconded by Sunderman and carried 9-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 3428,
A TEXT AMENDMENT TO TITLE 27
TO APPLY NEIGHBORHOOD DESIGN STANDARDS
IN THE R-1, R-2 AND R-3 RESIDENTIAL ZONING DISTRICTS,
and
MISCELLANEOUS NO. 03013
TO AMEND THE CITY OF LINCOLN DESIGN
STANDARDS TO BE CONSISTENT WITH
CHANGE OF ZONE NO. 3428.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand.

Staff recommendation: Approval.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted additional information for the record including six letters in support from various neighborhood associations, and an email request for a four week deferral until February 4, 2003.

Proponents

1. **Carol Brown**, 2201 Elba Circle, testified as board member of **Lincoln Neighborhood Alliance** and 17 co-sponsoring neighborhood associations in support of this change of zone. The Neighborhood Design Standards were created in 1989 to protect the positive residential character of our older established neighborhoods. These design standards currently apply to the R-4, R-5, R-6, R-7 and R-8 zoning districts, within a perimeter marked by the City Limits as of 1950. This proposed change of zone adds the protection of the neighborhood design standards to the R-1, R-2 and R-3 zoning districts within the same 1950 boundary. This perimeter was chosen to address these changes to infill development in the city's center. New development outside this area will continue to be unaffected. The 17 neighborhood associations make up a majority of the 1950 boundary. Brown further pointed out that this application is supported by the Urban Development Department and the Preservation Association of Lincoln.

Brown submitted that this proposal does not represent a drastic overhauling of the zoning code, but instead a few small changes that can produce a much larger community benefit. For the last 14 years, the neighborhood design standards have encouraged rehabilitation of existing houses with construction compatible to surrounding residential buildings. This change has created a very positive result in the R-4 through R-8 districts. Infill buildings have been designed to blend with the surrounding neighborhood character. Design elements include orientation of windows and entrances towards the street, height, roof lines, matching of buildings similar to the existing houses and parking in the rear of the building. Brown displayed photographs of examples of what the design standards would put into place. The parking is placed in the rear. The design standards provide for a building similar to the surrounding homes in height, mass and roofline, and the building is oriented outwards toward the rest of the neighborhood. Adding these design standards to the R-1, R-2 and R-3 districts within the 1950 boundary is a logical step to give these neighborhoods the benefits and protections that have been proven to work just a few blocks away. The design standards are about quality, not quantity. The review process is not very time consuming. Most builders know the rules. These would relate to infill projects and almost the entire city within the 1950 boundary is already built. These standards are both efficient and effective. "For strong neighborhoods, this change helps preserve their strength. For weaker neighborhoods, this change provides assistance." It protects the neighborhood character and encourages compatibility for new development. It represents a vision of Lincoln as a city where people continue to care about not just where they live, but how they live.

Opposition

1. **Mark Hunzeker** appeared on behalf of the **Home Builders Association**, but not necessarily in opposition. Hunzeker requested a deferral until February 4, 2004. The Home Builders Association includes some people that are very interested in how this is going to be applied, the purpose, etc. The Home Builders would like to meet with the people promoting

this idea to get a better understanding of the problem being addressed. These design standards were originally put in place in the multi-family districts for the purpose of addressing problems, such as blank walls, side entrances, balconies in side yards, multiple air conditioning units, etc. He does not dispute the fact that it serves a purpose in those districts, but he is not clear on the problem being addressed by expanding the application into single family zoning districts. Frankly, there are some real concerns about putting people trying to build single family homes in older areas of town through an additional architectural review as opposed to those literally on the opposite side of the street not having to go through those kinds of reviews.

Staff questions

Carlson presumes that what is being addressed by this legislation is the potential of duplexes in the R-1, R-2 and R-3 zoning districts, and he presumes that there are duplexes being built with the same orientation and parking difficulties that we are seeing with the multi-family buildings. Ed Zimmer of Planning staff agreed that there are some examples that fit that description.

Carlson believes that it would be almost impossible to build a single family house that would fail these design standards. They seem to be fairly specific. Zimmer suggested that a neighborhood design standard that we might see violated on a single family residence could be a residence that places the large garage in front of the house—the standards allow a garage on the front facade with 2 stalls and no more than 40% of the length of the facade. We tend to see that in these districts with a duplex and two-stall garage or three-stall garage. The standards allow no more than two stalls. You would have a very tall single family house before you would violate the height standards. And it would be unusual to see a single family house with more than 50' of frontage. It is also very unusual to see a single family house that does not put a window and door on the street side so that would not tend to be an issue.

Carlson noted the staff report mentioned that there have been 89 infill applications in the last three years. Greg Czaplowski of Planning staff corrected the record. The map initially created included some area outside of the 1950 boundary. The correct number of infill projects would be closer to 58 within the last three years within the 1950 city limit line. And approximately 14-15 of those were issued for townhouse development. Olympic Heights should not be referenced as it is outside the boundary.

Carlson suggested that those that have some substantial acreage associated tend to be a little different than an infill. Zimmer agreed. In our experience to date, these neighborhood design standards have not been applied to a community unit plan, so we will have to see how we would look at that design depending on the character of the land.

Carlson asked staff to discuss the review time. Zimmer stated that an attempt is made to fold it into the building permit process—that was the original concept, i.e. doing an administrative review rather than referring it to a citizen committee. Carlson also suggests that some of

these projects come in meeting the standard because the builders know the rules. Zimmer concurred.

Bills-Strand inquired whether it is permissible to have administrative action. Zimmer advised that to be the only way it is done now. The project is only taken forward on appeal.

Bills-Strand discussed the driveways, noting that a lot of these older areas don't have active or well-kept alleys making it difficult to put a garage off of an alley. How much are you going to limit the driveways? What about a 45' lot with a 2-stall driveway along with their 2-stall garage? Zimmer advised that if it is a 40' lot, they are on a narrow lot. Most often we see 45-50'. He reviewed one last year that came in with two 2-stall garages in the front. They divided the garages, keeping one on the front and put a driveway to the back and a detached garage for the second unit. They could have brought the garage to attach on an interior position rather than in front, but they opted for one free-standing garage in the back and a front garage.

Marvin inquired as to the square footage in R-3. Zimmer believes there is 50' frontage requirement for a full-size lot, and 100+ feet deep (120 x 50). Bills-Strand commented that a lot of houses that were in older areas were smaller but because of the depth it multiplied out okay. Zimmer concurred that there are areas that have narrower lots. Many of those lots of record are buildable lots.

Carlson confirmed that this only applies to new construction. Zimmer agreed. It applies to the new principal building or subsequent modification of that new building—not an existing building or accessory building.

Pearson wondered about an appeal process for someone with a narrow, long lot. Zimmer stated that because the action is administrative, there is not a great deal of discretion for staff. However, there is an appeal process to the Historic Preservation Commission. If the answer there is not acceptable, they can then appeal to the City Council. In our experience to date (15 years), Zimmer does not believe there has been an appeal to the City Council, and maybe just one to the Historic Preservation Commission.

Bills-Strand referred to the Mayor's streamline committee and inquired whether this will slow down the process at all. Marvin Krout, Director of Planning, does not anticipate that it will slow the process down because it hasn't in the other districts. With regard to the request for deferral, Krout suggested that anytime someone is claiming that they are not sure they understand the ordinance amendment and they would like more time, he does not have a problem stopping and explaining the process and bringing the applicant and the others together to talk about it. Generally, the Planning Commission has been willing to give neighbors who request some extra time to meet with the developer that opportunity, and he believes it would be fine in this case as well.

Carlson pointed out that alternatively, the Planning Commission has also encouraged that dialogue to occur between the time the Planning Commission takes action and the hearing before the City Council.

Response by the Applicant

Carol Brown reiterated that these standards have been in place for several years. They are not new but just being applied to other districts. These standards were given to the Home Builders in early December. They never got back to anyone to discuss them so she did not realize there was an issue. There was also a representative from the Realtors Association in attendance at the Mayor's Neighborhood Roundtable last month when this was discussed among the neighborhoods. The Neighborhood Alliance is more than open to meeting with anyone that would like to know more about this process, which has been in place in other districts. However, she would prefer to do that between now and the City Council hearing. Maybe there will be the need to request a delay before it gets scheduled at City Council.

Rick Peo, City Law Department, advised that the application could be delayed from introduction on the City Council agenda, or, if introduced, a request could be submitted to the City Council to delay public hearing.

Larson moved to defer, seconded by Sunderman.

Marvin stated that he wants to vote on the issue today.

Bills-Strand stated that she will vote to support the motion to delay so that once we are done it can go quickly to the City Council. She would like to see the groups get together. Even though it was given to the Home Builders, she just wants to see the communication.

Motion to defer failed 3-6: Larson, Sunderman and Bills-Strand voting 'yes'; Carlson, Krieser, Marvin, Pearson, Taylor and Carroll voting 'no'.

CHANGE OF ZONE NO. 3428

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Carlson moved approval, seconded by Marvin.

Carlson is confident that the applicant and the Home Builders will get together and he is sure they will find that the standards that have worked so well in the other districts will work just as efficiently and well in the R-1, R-2 and R-3 districts. Builders that do infill projects will be able to share with their colleagues that it is not going to be that much of a burden. The focus is to blend in. These design standards focus on specific things and they have done a good job in an efficient way and they provide protection to the neighbors.

Marvin indicated that he might feel differently if we were doing lots and lots of these projects. The land area that has been under the current design standards is larger than the new area being proposed. He does not believe there is going to be that many. This is not something that is onerous or difficult.

Larson stated that he is in favor. He had moved to defer because he believes it to be an odd arrangement to approve here and then defer at City Council.

Motion for approval carried 9-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

MISCELLANEOUS NO. 03013

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Marvin moved approval, seconded by Taylor and carried 9-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 3433

FROM R-4 RESIDENTIAL TO O-3 OFFICE PARK,
and

USE PERMIT NO. 33C,
FOR AN OFFICE BUILDING ON PROPERTY
GENERALLY LOCATED AT
HAVERFORD DRIVE AND L STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand.

Staff recommendation: Denial.

Ex Parte Communications: Commissioner Larson stated that he had a conversation with the applicant.

Proponents

1. Larry Albers, Suite 320 Commerce Court, 1230 O Street, presented the application and stated that he is here with encouragement from Gallup, the current owner of the two lots. Albers submitted a written response to the staff report. He clarified that he is not requesting to build a 155,000 sq. ft. building, which might be understood from the staff report. The application requests to increase the use permit covering the entire Gallup campus to 155,000 sq. ft. Albers is requesting to attach these two lots to the Gallup campus with the O-3 zoning.

The O-3 zoning requires a use permit setting out the limitations and restrictions on the property. Albers is planning to build a small, single story, brick, professional office building with pitched roof, with the parking access off of the Gallup campus parking (there will be no new drives off of Haverford) with the full required screening. The size of the proposed building would be approximately the size of the duplex to the north.

When Albers first met with Gallup to purchase the property, it was agreed that it was most important that he develop something that would not be intrusive into the neighborhood and that would be acceptable to the neighborhood. He called Bill Brown, President of the Taylor Park Neighborhood Association, who lives right across the street on Haverford Drive. They met and Mr. Brown is very interested in the plans and thought the neighbors would be as well. The Neighborhood Association had their annual picnic in September, so Albers attended the picnic in Taylor Park, with approximately 40 people in attendance. He gave a full presentation. He had sent a letter to the neighbors describing his plans. He called the neighbors that have homes fronting the two lots. At the Neighborhood Association meeting, there were some questions but there was nothing negative that came out of the meeting. In fact, the comments were quite positive.

Albers further explained that at that point, the zoning map showed the two lots as O-3, so at the time Albers thought this would only be an administrative permit. However, in working with the Planning Department, it was discovered in November that there had been an error on the zoning map and the two lots were actually zoned R-4, and Ray Hill of the Planning Department informed the applicant that he would have to request a change of zone.

After the staff report came out with a recommendation of denial, Albers checked to make sure there wasn't anything that he was missing in terms of the neighbors. He met with Bob Els, the new President of the Taylor Greens Association (Haverford Drive feeds into Taylor Greens). Bob and his wife were in favor and they had talked with some of the neighbors in Taylor Greens who had no objections. He again called Bill Brown last night and there were no objections. Albers is aware of no neighborhood objection. He also submitted a letter from Bill Brown in support. Albers also talked with the two owners of the duplex located just north. Their questions did not relate to his project. The confusion was over the 155,000 sq. ft. number that showed up in the staff report. Albers also noted that there has been a request for a stop sign at L and Haverford, which is a Public Works issue that he will deal with later.

Albers also submitted a letter from Gallup confirming their desire to make sure that the plans are kept reasonable and accommodating and non-intrusive to the neighbors.

Albers then submitted photographs of the site and examples of other office buildings in the city located next to residential properties (duplexes). Albers pointed out that construction of another duplex on the subject property would cause the need for additional access on Haverford and/or L Street.

Albers agreed with all conditions of approval set forth in the staff report.

Larson inquired whether Albers himself would use this entire building. Albers indicated that he would use about half for his law office and the other half for other professional offices. Marvin confirmed that Albers visited with the owners/occupants of the duplex to the north and explained the R-4 zoning situation. Albers acknowledged that he did meet with them and showed them the plan. They had no objections. One of the women stated that she was very pleased.

There was no testimony in opposition.

Staff questions

Carlson asked staff to respond to the design control under the use permit. When he read the staff report, he thought about the R-T and the controls we have in that zoning district. If this building doesn't get built, what are some other incompatible buildings that might be constructed? What design controls do we have under the use permit? Ray Hill of the Planning staff clarified that this use permit does not go just to this builder, but to the owner. Whoever owns the property must comply with these conditions of approval. Any change would require a modification of the use permit.

Pearson inquired about the error on the zoning map. When Albers purchased the property, did he think it was O-3? Greg Czaplewski of Planning staff believes that was what they thought. The map was not correct.

Response by the Applicant

Carlson asked the applicant if he was comfortable that his building design will fit within the conditions. Albers stated that he did not want to go too far down the road but he has indicated to the neighbors and the neighborhood associations that before he gets too far along with design, he is going to present it to them.

CHANGE OF ZONE NO. 3433

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Larson moved approval, seconded by Taylor.

Carlson believes this all goes back to design. He noticed that the pictures the applicant displayed showed office buildings buffered by duplexes, but he thinks that the building the applicant is proposing will fit in with the neighborhood.

Bills-Strand is supportive because this does not require additional driveways, which helps the neighborhood.

Motion for approval carried 9-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

USE PERMIT NO. 33C

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Larson moved approval, with conditions, with amendment deleting Condition #1.1.2 and #3 because the waiver of required parking was withdrawn by the applicant, seconded by Taylor and carried 9-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

COUNTY SPECIAL PERMIT NO. 206,
FOUR WIND ESTATES COMMUNITY UNIT PLAN,
and
COUNTY PRELIMINARY PLAT NO. 03009,
FOUR WIND ESTATES,
ON PROPERTY GENERALLY LOCATED
AT S.W. 84TH STREET AND OLD CHENEY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand.

Staff recommendation: Deferral until "Build-Through" standards are adopted.

Ex Parte Communications: None.

Proponents

1. **Brian Carstens** appeared on behalf of the owners of the property. This is an AG community unit plan without a 20% bonus. This property is located north and west of Denton, with some major floodplain and some high ground. The applicant is agreeing with the staff recommendation to relocate one lot to resolve the floodplain issues. They are proposing use of individuals wells. The well report was not one of the better ones, but with reverse osmosis it was believed that the water would be usable, and that is something typical in this area of the County. Carstens acknowledged that there is some opposition, but he believes the neighbors were confused about the AG cluster. This proposal seeks the same number of dwelling units as if subdivided into 20-acre lots. A lot of it is tree mass and farm ground, which will remain.

With regard to the staff recommendation of deferral until the build-through report, Carstens pointed out that this property is way on the top edge of the Tier III for future development; and it is 1/3 mile beyond the three-mile zoning jurisdiction. He does not believe the build-through report will change anything on this project. Carstens agreed with all conditions of approval set forth in the staff report and urged the Commission to recommend approval as opposed to deferral.

Marvin referred to #2 of the Analysis, noting the dedication of 60' of right-of-way as opposed to 120'. Carstens stated that this 60' is already shown on the plan and they have no problem with it.

Larson inquired about Lot #1 on the east side. Carstens acknowledged that they will have to extend the short private roadway on the east side to give access for that relocated lot. Lot 1 will go between Lots 2 and 3.

Marvin inquired about the roads. Carstens stated that it is a gravel road. S.W. 84th that goes into the north side of Denton is paved and this property is close to 1/4 mile from the blacktop. The private roadway will be gravel.

Opposition

1. Brent Spencer, 8005 W. Pioneers Blvd., testified in opposition. His property is located northeast of the site in question. Three years ago, he invested a great deal of money in his property on the assumption that the development standards would remain one house per 20-acres. This proposal equates to 3-acre lots. Spencer stated that he is in favor of development, but he is only in favor of what the Nebraska Rural Development Commission promotes, i.e. "phased and orderly development". It is clear that the plan on this proposal is to put as many houses in the space available as physically possible without enough regard to the land and community character by successful farming and the peacefulness and privacy of country living. The damage has already begun in the high density over-development of the land at W. Van Dorn and 84th. Spencer urged that it is time to slow down.

The problems are: 1) the removal of productive farmland; 2) impact on the natural habitat; and 3) impact on the water supply. The water test shows that the water around Denton is some of the worst water in the state. Water pressure in the area is as low as 3 gpm. Orderly development is 5 gpm. Spencer experiences days at his house when the water pressure drops and he gets brown water from the taps. The deeper you drill in this area, the worse the water is.

Spencer also does not believe that this land is suitable for septic systems. On a 20-acre lot, a large sewage pond may not be that noticeable but what about on a number of three-acre lots? There are sound reasons for regulations like the 20-acre rule and development of smaller lots is unwise and harmful to resources. It does not represent orderly growth consistent with the desires of the community and the availability of natural resources.

Marvin clarified with Mr. Spencer that he is concerned that the wells for this development would tap into his water supply. Spencer's response was that the water supply fluctuates pretty dramatically from time to time, but the "trend" toward these cluster developments will sometime drain the water supply.

Bills-Strand pondered whether seven 20-acre tracts might have the same effect on the water supply. Spencer suggested that if there are seven houses on less land, that means another development will come along very soon and do the same kind of cluster housing on other available land and suddenly the area will become overbuilt for the water supply that is available. He is not so much against this particular development as he is against it being part of a "trend".

Staff questions

Carlson inquired whether water quality and quantity are included in the performance standard package. Mike DeKalb of Planning staff stated that they are not. The information you get in the groundwater report is not part of our data base.

Carlson asked when the draft build-through ordinance will come forward. DeKalb indicated that the Planning Department has committed to have a draft of the build-through document at the March City-Common meeting, with something in place 90-120 days thereafter. It is anticipated that the Planning Commission will be invited to attend this meeting.

Marvin knows from other counties that the NRD has focused on well water. Does the NRD look in this particular area? DeKalb stated that Lincoln and Lancaster County have a superb relationship with the NRD. They have monitored wells around the county. City-County Health is also active. This property is in an area in the county where groundwater is poor and very spotty—you don't know until you drill. We do know, however, that this is a high risk area. The NRD has no information other than what the groundwater report indicates. However, in the last 10 years, their monitoring wells have not indicated a drop in the groundwater tables due to additional subdivisions in the area.

Pearson sought clarification of the purpose of the CUP. DeKalb explained that the CUP is used both in the City and the County. It allows for flexibility to accomplish innovative design, to keep building out of the floodplain, and to preserve environmental features or farmland. In this case, they are moving the buildings out of the floodplain and the farmed area. Pearson commented that if this piece of land was broken into seven 20-acre parcels, you would only be able to build on a few because of the floodplain. DeKalb suggested that they would probably do gerrymandering of the 20-acre lots with seven buildable sites with no conditions or review. In this particular case, it is a better circumstance because we can put in some conditions and warnings to the buyer.

Pearson inquired about the process for moving Lot 1 over to the proximity of Lot 3. DeKalb explained that it is a condition of approval so the applicant must show that on revised plans prior to scheduling on the County Board agenda.

Taylor inquired how the owners of the property would be affected in the future in terms of water problems and other potential conditions. DeKalb stated that the circumstance is that the owner could sell seven lots, with floodplain issues and lousy water. The advantage of this

mechanism is the same number of houses, with the buyers having the record of the approved special permit, which requires groundwater treatment. The access to the road will be a better design. In the end, the buyer will get a better deal.

Response by the Applicant

Carstens pointed out that there is no mention in the water report of this being the “worst water in the state of Nebraska”.

Larson inquired whether all of these lots will require lagoons. Carstens indicated that they have not done any perc tests. The conditions require that lagoons not be prohibited. Larson wondered whether there would be any possibility of having a common lagoon. Carstens thought that might be a potential condition, but it is cumbersome to get approval from the state.

Carstens also pointed out that the development north of this project on 84th & Van Dorn is “AGR” clusters (1-acre lots) and that density allows 1 dwelling unit per 3 acres.

COUNTY SPECIAL PERMIT NO. 206

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Larson moved approval, with conditions, seconded by Krieser.

Carlson stated that he will vote against the motion because he will support the staff position of deferral, which he has consistently done in the past. He believes the Comprehensive Plan is wise in its calling for the point standards and the build-through model, which is on a course to occur, and he believes we would be better served by waiting until that is in place.

Taylor did not hear any information that discredited the applicant's statements. He does not want to defer.

Bills-Strand noted that the Commission recommended approval of another acreage subdivision at the last meeting where the staff had recommended deferral. She believes that the clustering with conditions is better than seven 20-acre parcels. We don't know for sure when the build-through is going to happen.

Motion to approve, with conditions, carried 7-2: Krieser, Larson, Marvin, Sunderman, Taylor, Carroll and Bills-Strand voting 'yes'; Carlson and Pearson voting 'no'. This is a recommendation to the Lancaster County Board of Commissioners.

COUNTY PRELIMINARY PLAT NO. 03009

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Krieser moved to approve, with conditions, seconded by Taylor and carried 7-2: Krieser, Larson, Marvin, Sunderman, Taylor, Carroll and Bills-Strand voting 'yes'; Carlson and Pearson voting 'no'. This is a recommendation to the Lancaster County Board of Commissioners.

STREET & ALLEY VACATION NO. 03019
TO VACATE A PORTION OF WHITEWATER LANE
GENERALLY LOCATED AT N. 15TH STREET AND
WHITEWATER LANE.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand.

Staff recommendation: A finding of conformance with the Comprehensive Plan, with conditions of approval.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff requested to add Condition #1.4 requiring the submittal of a revised plat for approval of the Planning Director, and to delete Condition #1.2.

Proponents

1. Rick Onnen with Engineering Design Consultants appeared on behalf of the applicant. This vacation is simply being done to correct an error that occurred between survey, platting and construction. It is necessary to vacate this sliver to replat the lots so that they line up with the water main and paving as they were installed in the field. The applicant agreed with the conditions of approval, as revised today. They will be dedicating an equal piece on the other side of this cul-de-sac and will be asking that this property not be assessed to the owners of the adjacent property.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Carlson moved a finding of conformance with the Comprehensive Plan, with conditions, as revised, seconded by Larson and carried 9-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

STREET & ALLEY VACATION NO. 03022
TO VACATE THE SOUTHERN FOUR FEET OF
THAT PORTION OF THE EAST-WEST ALLEY,
GENERALLY LOCATED AT
N. 14TH & "P" STREETS.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand.

Staff recommendation: Not in conformance with the Comprehensive Plan - denial.

Ex Parte Communications: None.

Proponents

1. Brad Harris, Runza National, presented the application. They currently have two parking stalls off of the alley. The existing alley is 20' wide, which is unusual. Most alleys downtown are 16' wide. The intent of the vacation is to create some additional parking stalls (90 degree stalls as opposed to two parallel stalls). They had a preliminary meeting with Public Works where Public Works suggested that they apply to vacate the southern 4', the reason being that the design standards require a certain depth for 90 degree parking stalls. With the 4', they could get the sufficient depth for the six 90 degree parking stalls. This is the purpose of the request to vacate.

With regard to the staff recommendation of denial, Harris noted that one of the concerns was that parking off an alley downtown is not common. Harris countered that there are a variety of situations downtown where there is parking off of the alley. He passed around some pictures of such examples. Another concern in the report was that this could create additional traffic conflicts. Harris does not believe this is an overly busy alley and he does not believe the additional parking stalls would necessarily create traffic conflicts. They intend to dedicate 3-4 of these stalls for employees, and probably only 2 stalls would be dedicated to customer traffic, so there would not be a lot of turnover in these parking stalls. With regard to delivery truck traffic, one possibility would be to create a dedicated delivery stall where they currently have a dumpster located. The applicant had a subsequent meeting with Public Works to discuss these concerns, and while the applicant was not able to convince Public Works to change their recommendation, the applicant would agree to the conditions of approval set forth in the staff report requiring 50 degree parking stalls as opposed to 90 degree parking stalls. This would not allow as many parking stalls but the applicant would agree to this condition. The applicant also agrees to extend the curb return to match the new alley width of 16'; as well as posting the \$2,000 bond.

Harris believes that the reduction from 20' to 16' in this alley would be consistent with most downtown alleys; this change will not affect traffic flow through the alley; and the applicant certainly would be willing to consider vacating less than 4' as long as there is enough room to meet the parking design standards for the 90 degree or 50 degree parking stalls.

Harris reiterated that they intend to dedicate at least half or more of the stalls for employee parking and at least two stalls dedicated for customers.

Pearson inquired whether the applicant would be willing to dedicate all of the stalls to employee parking and delivery. Harris indicated that they would prefer to leave at least a couple of the stalls available for customer traffic. Pearson's concern is that if the general public knows there is parking back there, they are going to be driving there and it is not going to be available and they will be circling the block, which will increase traffic. Don Everett, President of Runza, stated that the applicant would be willing to dedicate those stalls to employee parking; however, they wanted two stalls for pick-up customers. Downtown is a challenge for businesses because of parking. The two stalls they wish to dedicate for customers would simply be for "take-out" orders from Flatwater, which they just opened. Pearson still believes this would then increase the traffic in the alley. Everett further offered that the majority of their business is from 12:00-1:00 p.m. Beyond that, these parking stalls would not turn over very often. He does not consider this alley any busier than any other alley. In fact, the congestion, if any, is due to delivery trucks delivering food to their business or to Amigo's. Runza is willing to dedicate part of their property for delivery trucks so that they can be off of the alley and off of 14th Street. Pearson thought this alley was the exit for the Runza drive-through. Everett clarified that the exit for the drive-through runs parallel to the alley. The drive-through is completely separate from the alley.

Bills-Strand wondered whether the alley serves as an exit for the other two fast food restaurants that share that area. Everett stated that both of the fast food restaurants have their own ingress and egress, but there is still traffic that goes through there. He knows that Arby's wants to keep traffic flow through there and changing the alley to 16' would not preclude one-way traffic as it has always been designated. Runza would recommend maintaining the 16' width. He was not sure that the alley is marked one-way.

There was no testimony in opposition.

Staff questions

Taylor asked for a staff response. Dennis Bartels of Public Works stated that the subdivision ordinance provides for the alley width of 20'. However, he acknowledged that the majority of dedicated alleys in the downtown area are 16' wide, even though the ordinance speaks otherwise. Nevertheless, the present standard is 20' instead of 16'. With regard to the one-way alley, Bartels advised that the Lincoln Municipal Code provides that all downtown alleys are to operate one-way. This alley does not go through the entire length east to west. You have to make a left hand turn and exit onto Q Street. It functions as a one-way west to east,

and then north to Q Street. Public Works objected to the 90 degree parking because the design standards require more than 15' for a 90 degree parking stall. Public Works is recommending the 50 degree stall because you do not need as much turn width to back out in a single motion.

Taylor inquired whether there is some sort of easement that is available that makes it so that there can be flow-through traffic in those areas. Bartels responded stating that this alley was paved 20' in width when the Children's Museum opened. It functions as one-way off of 14th Street. Another reason for recommending denial is that in reviewing vacations, as a policy we want to treat both sides equally. If we vacate 4' off the Runza side, we would definitely be opposed to doing it on the other side. However, if the applicant agrees to 50 degree parking stalls off of the alley, Bartels believes it will function.

Larson asked how many parking stalls will be lost with the 50 degree parking as opposed to 90 degree. Bartels thought it might perhaps be one. There may be some opportunity to adjust some other dimensions. Just backing out into the alley, people coming in off the street will have to wait. We do not want to encourage a lot of traffic in alleys that doesn't have to be there.

Since we're not vacating the complete alley on one side, Carroll wondered what kind of traffic problems the 16' width creates. Bartels stated that Public Works is requesting that they rebuild the south return on the alley so that functionally, off of 14th Street, there is a 14' opening.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Larson moved a finding of conformance, with conditions as set forth in the staff report, seconded by Taylor.

Taylor does not believe this will add more traffic; however, he wants there to be an indication that the area will be used for "take-out" customers only.

Carlson moved to amend to add a condition that two of the parking stalls would be designated for "take-out" (delivery/pickup) customers and the balance designated for employee parking only, seconded by Taylor and carried 9-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand voting 'yes'.

Bills-Strand commented that it is nice to add some parking for employees because it is difficult to hire employees for these downtown businesses when they have to pay for parking.

Main motion for finding of conformance with the Comprehensive Plan, with conditions, as amended, carried 9-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Taylor, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

WAIVER NO. 03014
FOR MODIFICATIONS TO THE SUBDIVISION
ORDINANCE ON PROPERTY GENERALLY
LOCATED AT N. 33RD STREET AND GLADSTONE STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Carroll and Bills-Strand (Taylor absent).

Staff recommendation: Denial of the waiver of dedication of the remainder of the half street (N. 33rd Street), and conditional approval of the remaining waiver requests.

Ex Parte Communications: None.

Proponents

1. Bill Frost, Chief Engineer with Nebraska Broadcasting--KLIN Radio, presented the application and submitted Exhibits A, B and C. The special permitted radio tower at 33rd & Cornhusker Hwy has now been completed. One of the unique aspects of the piece of property upon which the tower is located is that it falls squarely in the path of the proposed extension of 33rd Street to go around and across Salt Creek. Because of this location, they worked closely with the Antelope Valley project architects to determine whether access is going to be an issue, both presently and when that project comes to fruition. The staff recommendation for subdividing this Lot 1 from Lot 2 included dedication of half of 33rd Street, continuing up the west side of this lot. In addition, the staff recommendation also allows a waiver of the requirement to install sewer and water up that easement because of the anticipated extension of 33rd Street because the staff recognized that these improvements would likely be destroyed. The staff has made that concession with the stipulation that Lot 2 be made a nonbuildable outlot. The applicant was surprised by this stipulation because 1) the dedication of 33rd Street really doesn't serve any purpose to

improve the access or the services to that lot in light of the Antelope Valley project; and 2) to create Lot 2 as a unbuildable outlot creates a hardship and injustice on the owner. A cloud hangs over this lot now because of the existence of this plan, but to place the requirement that this lot now not be buildable seems an extreme request.

2. Lyle Loth from ESP referred to the three exhibits.

Exhibit A represents the situation as it exists today and will remain in the event that these requested waivers are denied and the final plat is withdrawn. It consists of Lot 162 IT, which is approximately a 27-acre tract consisting of about 2.8 acres for the radio tower site, a 7.2 acre easement area to lower Platte South NRD for Salt Creek, and the remaining 16 acres of Lot 162 IT. Lot 162 IT is zoned I-1 and has 80' of access and frontage to 33rd Street at the

very southeast corner of that lot. It also has access to water and sanitary sewer at that intersection.

Exhibit B represents the circumstance if the waivers are granted and the final plat is processed, resulting in Lot 1 (the radio tower site), which would be sold to KLIN. Lot 1 would have an access easement to the south along Dead Man's Run, and it would also contain Lot 2, which would be 16+ acres of I-1, also having the 80' of access and frontage to 33rd Street as well as access to water and sanitary sewer. Outlot A would contain 7.2 acres, which could be donated to the NRD for their right-of-way. The access to Lot 1 is "down along here and continues clear on south to about a block north of Cornhusker Hwy".

Exhibit C represents the staff recommendation. That circumstance would leave the radio tower site (Lot 1), and it could be sold to KLIN. Lot 16 would be changed to Outlot B and would be nonbuildable (a 15+ acre lot that could not be developed). Outlot A could be donated to the NRD. However, Loth indicated that this is not an acceptable alternative. If the staff recommendation is approved, the plat will be withdrawn and they would revert to Exhibit A.

Loth noted that if the applicant were to withdraw the waiver of the requirement for right-of-way dedication along 33rd and agree to change Lot 2 to an outlot, this application could be final action by the Planning Commission; however, these two conditions are not acceptable to the applicant. Loth suggested that the staff could revise their recommendation to grant the waiver of the right-of-way dedication along 33rd Street and remove the condition that outlot designation be applied to Lot 2. That would enable the Planning Commission action to be final and it would not be necessary to take this application to the City Council.

Carlson inquired about the access to Lot 1. Loth stated that the access to Lot 1 is the same in all three exhibits. It is along the west side of the property—the 30th Street access easement which ties into the 31st Street Circle. The easement will be filed with the Register of Deeds. Loth believes that the designation of a lot as an outlot is an unfair circumstance. As far as the dedication along 33rd Street, Loth believes it extremely unlikely that 33rd Street in that location will ever be open. It is unfair to ask the owner to dedicate that right-of-way. He thinks dedicating the right-of-way gives the city some trading power when it comes time for right-of-way for the Antelope Valley project. Referring to Exhibit A, Loth pointed out that they have 16 acres of Lot 162 that could be developed as light or heavy industrial without any hearing process. However, their preference would be to do a plat so that KLIN could have ownership of their site. In the event that does not occur, the owner would be willing to accept a lease arrangement for that site. Loth believes it is a stretch that they are subdividing Lot 2. For all practical purposes, it is still Lot 162.

There was no testimony in opposition.

Staff questions

Carlson asked staff to explain the rationale for designation of an outlot versus letting them keep a lot. Tom Cajka of Planning staff explained that by designation of the outlot, they could not build on it at this time. As a buildable lot, it should have access to streets, public water, sanitary sewer, street improvements, etc. The staff has agreed to allow those waivers as long as that is not a buildable lot at this time. They would need to put in the improvements if it becomes a buildable lot. In addition, the subdivision ordinance requires that you dedicate that half of the street.

Dennis Bartels added further clarification. If Lot 2 is to be platted, the subdivision ordinance would require dedication of the rest of 33rd Street, paving, and construction of sewer and water, but before we do that we would want a grading plan because it is in the floodplain. He does not believe there is acceptable frontage for that lot on a development of 16 acres. If Lot 2 was going to be created as a buildable lot, he would like to see a preliminary plat to provide a reasonable opportunity to review what other improvements might be necessary to make it a conventional lot.

If it moves forward as an outlot, Carlson assumes they would submit a preliminary plat just like every other lot in town. What about the road network? Bartels suggested that if they came in with a preliminary plat, it would be difficult because of the conceptual nature of the Antelope Valley project. We could not deny a preliminary plat and some use on this property if it met all the subdivision requirements. As long as it was just for purposes of the tower, Bartels thought it would be okay to have Lot 1 with no access. But if the tower ever goes away, then you have a piece of property that could be sold with potentially an untenable street situation. If Lot 2 was subdivided, Public Works would be asking for some kind of local street system to provide frontage for Lot 1, etc.

Cajka further advised that the staff did consider the possibility of having them put an easement on the plat showing the location of the road. But since the roadway has not been decided in the Antelope Valley process, Law Department indicated that we could not request an easement. Thus, we went back to the subdivision ordinance that states that they need to grant the other half of the dedicated street.

Larson believes that an easement would be appropriate. Cajka reiterated that the potential location of the Antelope Valley roadway is still conceptual. The staff cannot ask for an easement based on a "conceptual" location.

Larson inquired about the area north of Gladstone and east of 33rd. Cajka stated that part of it is a salvage yard.

Pearson noted that the owner indicated that making Lot 2 an outlot was untenable for them. Even if it is a lot, then they still have to go through the requirements to make this a plat, don't they? What's the difference between making it an outlot and a lot? Cajka explained that an

outlot is unbuildable. Bartels further explained that Lot 162 as it sets today is a buildable parcel, but you cannot sell it off without formal subdivision. If it is an outlot, you would have to go through the subdivision process and create it as a buildable lot before you could get a building permit, which would be the result if the staff recommendation is approved.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Carlson moved to approve the staff recommendation, seconded by Marvin.

Carlson believes that the operative word is that you “designate it as an outlot for future development”. It does not remove the opportunity to do something in the future. It is common that when you subdivide you have to dedicate the half of the street.

Motion approving the staff recommendation carried 7-1: Carlson, Larson, Marvin, Sunderman, Pearson, Carroll and Bills-Strand voting ‘yes’; Krieser voting ‘no’; Taylor absent. This is a recommendation to the City Council.

ANNEXATION NO. 03002:

CHANGE OF ZONE NO. 3411

**FROM AG AGRICULTURAL AND AGR AGRICULTURAL RESIDENTIAL
TO H-4 GENERAL COMMERCIAL AND
B-5 PLANNED REGIONAL BUSINESS;**

USE PERMIT NO. 150 FOR COMMERCIAL FLOOR AREA;

and

SPECIAL PERMIT NO. 2046

FOR PLANNED SERVICE COMMERCIAL IN H-4

ON PROPERTY GENERALLY LOCATED

AT S. 84TH STREET AND HIGHWAY 2.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Carroll and Bills-Strand (Taylor absent).

Staff recommendation: Approval of the annexation, subject to an annexation agreement; approval of the change of zone; and conditional approval of the use permit and special permit.

Ex Parte Communications: None.

Brian Will of Planning staff submitted a letter from Russ Kromberg and the staff response back to the inquiry addressing the concerns raised.

Proponents

1. DaNay Kalkowski appeared on behalf of **Andermatt LLC and Eiger Corp.**, the owners and developers of the property. These applications involve development of the second phase of the 84th & Hwy 2 regional commercial center. This phase is located south of Hwy 2, and north of the railroad tracks between S. 84th and S. 91st Streets. The annexation of this entire area, except for a small portion along 94th Street, was master planned along with the area north of Hwy 2 between 84th and 98th Streets as part of the conditional annexation and zoning agreement for So. 84th and Hwy 2 approved in 2001. When we did that agreement, we master planned the infrastructure for this entire area. As part of that agreement, they set out a number of peak hour trips that could be generated by the uses, and the plan proposed and the uses proposed stay well within that trip cap.

Kalkowski further testified that this development is intended to be more service oriented than the area to the north, utilizing the access and visibility from Hwy 2. It is not intended to have uses that will compete with those on the other side of the highway. The current plan shows several sit-down restaurants along 84th Street; then moving to the east there are hotel, gas station and convenience store; and then moving on to the east there are more general commercial uses and some mini-warehouse uses. The uses proposed on the east and west ends are all limited to uses that are less intense from a traffic standpoint. On those two ends, the development abuts Ambers Hills to the west and the town of Cheney to the east. There are conditions requiring that there be no intense uses, such as drive-through restaurants or 24-hour convenience store.

The site includes significant green space. The green space along 84th is significant ranging from 100' to the north to an outlet as wide at 300' as you move to the south. The owner is granting an easement for the city to locate a trail along the south of this development, which will then connect to the trail proposed to come down the east side of 91st Street. Sidewalks will be shown along S. 84th Street, S. 91st Street, and on both sides of the internal roadways. There are two exceptions and they are seeking waiver of the sidewalks along Hwy 2 and the 87th Street entrance. The reason for those waivers is to be consistent with what was done on the north side. The rationale behind waiving those sidewalks is that this is an area where we do not want to encourage pedestrians along Highway 2.

Kalkowski then submitted proposed amendments to the conditions of approval on the use permit and special permit. She believes these amendments address the concerns and believes that the proposed amendments are acceptable to the staff.

Kalkowski advised that a neighborhood meeting was held on December 18th.

Kalkowski acknowledged that one of the major topics of discussion is the Village of Cheney's long term access off of 91st Street. That was a big issue in the subarea plan as well. Right now, the construction of S. 91st Street south of Hwy 2 is in process. That construction will stop at 600' and there is no connection—that road is not going anywhere until some point when the

city is ready to build the next section that will connect Yankee Hill Road into S. 91st Street. At the time of the annexation agreement, they had discussed the potential of a full median access opening that would be just directly north of the railroad track south of the highway to ultimately provide some long term access to Cheney and to the development on the west side. The temporary solution was to construct the "Cheney connector" in the short term, which is further to the north, and that connection is being constructed as part of this project. When the applicant discussed this with Planning in bringing this proposal forward, we were informed that plans had changed and the city was no longer in favor of a full access opening further to the south. The access we have on 91st is simply a long term right-in, right-out movement. Thus there is an issue for Cheney that when 91st and Yankee Hill Road are connected, Cheney would still have to deal with their long term access issue. From this applicants' standpoint, Kalkowski stated that they are in agreement with the access Public Works is allowing at this time.

Carlson referred to bicycle/pedestrian transit access. There is a trail along the south side and this development sets up the internal sidewalk system. Now this application is moving the pedestrian access to between Lots 1 and 2. Are you considering a natural tie-in for the hotel? Kalkowski suggested that as part of the hotel construction, it may be possible to make some pedestrian connection in the future. They had the pedestrian connection moved because they don't know the user yet and that lot line may shift. Carlson pointed out that the Comprehensive Plan calls for regional shopping centers to take pedestrian/bicycle transit into consideration. Kalkowski responded, stating that, "the trail crossing will be at "91st Street, coming down and going around". As part of the construction plans for 84th Street, there is a provision for pedestrian crossing at 84th Street. The rationale was that we weren't necessarily encouraging pedestrian traffic from one side of the highway to the other. Carlson referred to SouthPointe, where there is a trail running right next to it, but it is difficult to get off that trail if you live in the neighborhood. He also referred to the Lincoln Federal parcel at 27th & Yankee Hill Road, where they have shown pedestrian motion to draw consumers in from surrounding neighborhoods. Kalkowski again responded that the whole intent of this area is not to be competing with the area to the north. But Carlson believes there is potential residential to south and west. Kalkowski then stated that they are showing sidewalks on both ends with the trail going along the south. They are also showing sidewalks on both sides of 84th Street and 91st Street along with the trail on 91st Street. Carlson reiterated that ultimately there will be residential to the south and west. Carlson wants to encourage that the applicant take into account a pedestrian transit base that may want to move into those buildings.

As far as entrance into the City, Kalkowski submitted that this development will comply with the entryway corridor set out in the subarea plan and that they have attached some design covenants as part of the use permit to show that this area will be compatible with the development to the north. The intent is to present a very nice entryway into the city. Pearson confirmed that the sidewalk along S. 87th Street is being taken out, but the sidewalks will be going in on S. 84th Street. Kalkowski concurred. There will be sidewalks on the east side of 84th Street as part of the 84th Street construction project.

Opposition

1. Gayle Hanshaw, Cheney, testified and referred to a letter he sent to the Planning Commission in October and a letter he sent to the Mayor this week. Cheney's concern is about access to Cheney. 91st Street has been their access for 135 years. There is about a 2-mile piece of Hwy 2 coming through Cheney and off to the east that still remains and they would like to preserve that. 91st Street is Cheney's front door and it is looking like the City wants to close that front door. Back in the early days of the public discussions on the shopping center, the Cheney residents truly did understand that they had an agreement that they would have a full turn intersection on 91st Street going to Hwy 2. Hanshaw has heard second-hand that there is a proposal to close that off and force the Cheney access to be someplace else. This is a real affront to the community and the folks that have lived out there all this time. They spent a lot of time providing input at public hearings early on with the Comprehensive Plan update and then the phase one of the shopping center, and they felt they had an understanding that they would be able to get in and out of Cheney. Hanshaw requested that the Planning Commission send forth the message to keep 91st Street open. There is land that can be purchased to provide for the stacking space that would be needed, and it is a doable deal.

2. Lonnie Athey, who owns a business in Cheney, is worried about the 91st Street entrance that was promised to be provided. But now, the residents of Cheney are hearing through the grapevine that 91st Street is going to be eliminated. The Cheney residents use that access. "Temporary" access does not fit.

Staff questions

Marvin asked for a staff response regarding 91st Street. Dennis Bartels of Public Works stated that it has not been studied so he does not know the final design. There are some considerations that exist at the intersection. This temporary connection is approximately 600 ft. from Hwy 2, which is a terrible spot to have to put another signal or full access. Then we've got the constraint of the railroad tracks. If the railroad goes away in the future, it opens up some opportunities. At this point, we do not have any way to serve the area to the south with sewer. He is not sure whether it will be a city or county project to extend that sewer. In the subarea plan, the city guaranteed some access from Cheney to 91st Street, but he does not know whether it was site specific or the rebuilt connection that is happening now. For the foreseeable future, that rebuilt connection would provide full access to 91st Street. That intersection may be necessary to move south at 91st & Yankee Hill Road in order to design a safe and sufficient intersection that will be signalized in the future. Bartels anticipates that the first intersection south of Hwy 2 may warrant a signal, but the existing Cheney connection 600' south of the highway is not an efficient place to put a signal so it might be desirable to move it further south. There are problems that will need to be addressed and at this point it has not been studied and it has not been addressed. He understands that Cheney would be provided full access in the subarea plan, but he cannot answer where that full access point might be in the future.

Marvin does not believe 84th looks like a straight shot through. Bartels advised that what was approved on the north side of Highway 2 as the new 84th Street is not along the old mile line, so where it crosses the highway it is going to have to curve back towards the west. We are finishing the design now and will probably have a project next summer to build 84th Street south to Amber Hill Road. There is a traffic light at 87th Street and there will be a light at 91st Street and 84th Street.

Bartels further explained that the alignment shown on the map is the right-of-way that the county purchased a number of years ago for Yankee Hill Road curving over to Hwy 2. The triangular piece of land is all right-of-way approved with the first phase of the subdivision. 91st Street will be paved with urban street approximately 600' south of Hwy 2, and then a new alignment created for the Cheney connector will be built as part of that project. Until 91st and Yankee Hill Road is extended south and west, there will be full access at that point, similar to what there is now. You come off the highway heading south, and then you will have to make a left turn, but there will be no opposing traffic.

Bills-Strand confirmed that this development and Cheney will both continue to have full access on 91st until some study of redesign is done. Bartels stated that to be true until there is final design of Yankee Hill Road and 91st Street.

Carlson noted that the access on the eastern end of Appian Way is going to create the issue. Bartels disagreed. It gives them full access right now. At a point 600' from Hwy 2, we anticipate the traffic volume might cause stacking going into Cheney. It is possible to put an intersection there, but from a traffic engineering standpoint, we don't want to guarantee people that is where it is going to be. Carlson asked whether it is the access into the shopping center that causes the limited access of the intersection. Bartels said, "no". This 91st street curves into Yankee Hill Road. He is anticipating that when Yankee Hill Road is paved from the west end of the city to the east, it will carry a large volume of traffic and there will be a large volume wanting to go through 91st & Hwy 2. It would be difficult to design two efficient intersections to keep traffic moving through those intersections.

Response

Kalkowski reiterated that the access being shown is acceptable to the applicant.

Brian Will of Planning staff agreed with the proposed amendments to the conditions of approval, with one exception. He requested that Condition #1.1.13 of the use permit contain language such that the specific language be clarified and approved by the Director of Planning.

ANNEXATION NO. 03002

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Larson moved approval, subject to an annexation agreement, seconded by Carroll.

Pearson is not sure exactly what she has heard, but it sounds a little like the city is proposing that Cheney move their entrance to their town. She thinks that is a crime. She feels like no one is listening to Cheney and she will vote against this just because she doesn't know what else to do at this point. There is potential for the developer to continue that road and finish what they have started and that would then connect, but they are not choosing to do that.

Carlson agreed that it is troubling because we don't have an answer. However, he believes the circumstance, even with approval, is that there still is connection but we don't know what the long range solution might be. He understands Cheney's concern. What we are approving today does not mandate the closing of that intersection nor the loss of service of that intersection, but we don't have an ultimate solution and that's a shame. He will support the motion because the connection still exists in what is before the Commission.

Carroll commented that 91st Street going into Yankee Hill Road will generate large volumes of traffic in the future and it is not because of this development. It is because there is traffic coming from the west going east, and that is what is going to generate the design--not this development specifically. We cannot blame this development because there is not a solution for Cheney today. He is sorry that Cheney can't get an answer today, but he doesn't think that answer will come for a long time, based on when Yankee Hill Road is ultimately built.

Pearson again suggested that the remedy would be for this development to continue 91st Street. Carroll does not believe the design standards are there yet because the traffic volume isn't generated yet.

Bills-Strand commented that what is shown takes the Cheney entrance from 91st to about 87th & Yankee Hill Road. Larson believes this would be a better entrance to Cheney.

Motion for approval carried 7-1: Carlson, Krieser, Larson, Marvin, Sunderman, Carroll and Bills-Strand voting 'yes'; Pearson voting 'no'; Taylor absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 3411

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Larson moved approval, seconded by Carroll and carried 7-1: Carlson, Krieser, Larson, Marvin, Sunderman, Carroll and Bills-Strand voting 'yes'; Pearson voting 'no'; Taylor absent. This is a recommendation to the City Council.

USE PERMIT NO. 150

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Larson moved to approve the staff recommendation of conditional approval, with amendments as requested by the applicant, with the additional language as requested by staff on Condition #1.1.13, seconded by Marvin and carried 7-1: Carlson, Krieser, Larson, Marvin, Sunderman, Carroll and Bills-Strand voting 'yes'; Pearson voting 'no'; Taylor absent. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 2046

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Marvin moved to approve the staff recommendation of conditional approval, with the amendments as requested by the applicant, seconded by Larson and carried 7-1: Carlson, Krieser, Larson, Marvin, Sunderman, Carroll and Bills-Strand voting 'yes'; Pearson voting 'no'; Taylor absent. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 3431

A TEXT AMENDMENT TO TITLE 27

OF THE LINCOLN MUNICIPAL CODE

REGARDING MEDICAL TESTING LABORATORIES.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Carroll and Bills-Strand (Taylor absent).

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

1. Brian Carstens appeared on behalf of **West Point LLC**. This fall, in an effort to redevelop the building at 5401 South Street, the applicant entered into an agreement to lease about 90% of that building for a medical testing laboratory. Carstens had originally requested an amendment to allow medical testing laboratories in the B-1 zoning district, and Planning staff was concerned about the definition. What is before the Commission is an alternative to the original application as developed by Planning staff and the Health Department.

There was no testimony in opposition.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

January 7, 2004

Larson moved approval, seconded by Carlson and carried 8-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent. This is a recommendation to the City Council.

USE PERMIT NO. 106A

**TO AMEND THE BOUNDARY, RELOCATE
ACCESS, ADD A SIGN AND REDUCE THE PARKING
REQUIREMENT, ON PROPERTY GENERALLY
LOCATED AT 65TH STREET AND PIONEERS BLVD.**

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

January 7, 2004

Members present: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Carroll and Bills-Strand (Taylor absent).

Staff recommendation: Deferral until January 21, 2004, to advertise additional waiver requests.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff clarified that the applicant has requested four waivers: street trees, sidewalks, street width and to allow a dead-end private roadway.

Carlson moved to defer, with continued public hearing and administrative action scheduled for January 21, 2004, seconded by Carroll and carried 8-0: Carlson, Krieser, Larson, Marvin, Sunderman, Pearson, Carroll and Bills-Strand voting 'yes'; Taylor absent.

There being no further business, the meeting was adjourned at 4:30 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 21, 2004.